

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. See 86 Ill. Adm. Code 130.310 (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your consumer complaint filed with the Illinois Attorney General's Office on April 10, 2003. The information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

I often eat at the AAA cafe store in CITY, IL. Some of the time I buy bakery goods. I resented having to pay 9% tax on bakery goods which was the restaurant tax for eating in. So I objected to paying it, but the sales person refused to give me the bread if I paid the grocery tax of 1.5 or 1.7%. So I reported this to the headquarters of AAA store. In due time this was changed at the CITY store, but not at the Batavia store which I also attend. They are charging 6.5 sales tax for both bakery and cafe. I believe a large company like AAA know that they are charging the wrong tax and are pocketing the extra money. Just one store is a million dollar operation. I think you should investigate them and correct their sales charges.

We have provided a copy of your complaint to the Audit Bureau of the Illinois Department of Revenue for review. Please find below general information regarding the tax rate charged on the sale of food in Illinois and a brief explanation of how the tax is applied.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Illinois imposes a Use Tax on the privilege of using in this State any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. The sales tax rate is 6.25%, plus any applicable local taxes. A reduced sales tax rate is applicable, however, to the sale of food if certain conditions apply.

For your information and reference please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold. Food

that is prepared for immediate consumption is taxed at the regular sales tax rate of 6.25%, plus any applicable local taxes.

Food is defined as “any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice”. See Section 130.310(b)(1).

Taxation of food at the reduced sales tax rate depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold, therefore, the nature of preparation and the premises where the food is sold are factors in determining the applicable sales tax rate. Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantial delay. See Section 130.310(b)(5). All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax unless the facility utilizes a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3).

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all food sales if a majority of the gross receipts from food resulted from food items sold in a state of preparation for immediate consumption. However, where an establishment primarily sells food (over 50%) in bulk, such establishment will incur the reduced rate on all food items, except soft drinks, food prepared for immediate consumption and alcoholic beverages, which are always taxed at the high rate.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department’s Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion
Associate Counsel

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